

Application No.: 10/666,608

Docket No.: 66192-0003

**REMARKS**

Applicant has reviewed the office action dated March 28, 2005, and thanks Examiner Weier for his review of pending claims. Claims 1-5 were rejected under 35 U.S.C. § 103, citing U.S. Pat. No. 4,296,141 ("De Paolis"), and claims 2-4 and 6-9 were rejected under 35 U.S.C. § 103, citing De Paolis taken together with U.S. Pat. No. 6,740,350 ("Pfeiffer"). Applicant has amended claims 1, 7 and 9. However, by way of this amendment, no new matter has been added. Applicant respectfully requests reconsideration of the present application in view of the above amendment and the following remarks.

Independent claims 1, 7, and 9 are now focused on a nougat having a "protein material ... dispersed throughout said nougat, said nougat having a texture, and wherein the bonding characteristics of said protein material do not degrade the texture of said nougat." Paragraphs 17, 27, 36-37, 53, and 56-58 of the specification provide the support for the amendments.

Specifically, paragraphs 53 and 56-57 of the specification disclose that the speed at which the protein materials are mixed into the flavoring syrup during the preparation of the nougat affects the ultimate texture of the nougat. The slow mixing speed ensures complete mixture without degrading protein bonding characteristics, which would thereby degrade texture of the ultimate nougat. One of skill in the art understands that the desired texture of a nougat is suitable for use in a candy bar (paragraph 17), involves a certain amount of aeration to reach a desired density and texture (paragraph 27), and involves a desired moisture achievable by adding certain moist ingredients and by drying a mixture by using certain other ingredients, such as whey, soy, or wheat proteins (paragraphs 36-37 and 58).

De Paolis is non-analogous art. It teaches an improved method to make a chocolate coating that might, for example, cover a nougat disclosed in the above-captioned specification. The improved method involves using a soya protein isolate as an emulsifier, eliminating a "conching" step, commonly used in chocolate manufacturing. *See* De Paolis, col. 2 lines 15-20. The problem De Paolis solves; that is, elimination of a conching step, would not resonate as being relevant to a skilled artisan in the manufacture of nougat because the conching process is not used in the preparation of nougat. Moreover, one of skill in the art understands that the desired texture and other physical properties of a chocolate coating on a candy bar are different

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from the desired texture and other physical properties of a nougat center of a candy bar. The methods of making a desired chocolate coating are not instructive about the methods of making a nougat center.

Further, even if De Paolis were considered to be part of an analogous art, it does not teach a method that could result in a nougat having both the desired texture and the high protein content as disclosed in the above-captioned specification. De Paolis teaches admixing the ingredients, including soya protein isolate, to form a paste; passing the paste through rollers; extruding the paste, then blending the remaining ingredients to achieve a liquefied blend, under agitation. *See* De Paolis, col. 3 lines 42-50. The high speed blending of De Paolis, resulting in liquification, would degrade the protein bonding characteristics the nougat disclosed in the specification, which in turn would degrade the texture of the ultimate nougat. *See* paragraphs 53 and 56-57 of the specification.

Pfeiffer does not cure the deficiencies of De Paolis. Although Pfeiffer identifies additional protein sources for its claimed composition, including whey proteins, in column 6, Pfeiffer discloses that it can only achieve a 10% by weight content of protein in its confectionary composition. In other words, like De Paolis, Pfeiffer does not teach a method that could result in a nougat having both the desired texture and the high protein content as disclosed in the above-captioned specification.

None of the references alone or in combination make obvious the claims as now recited. Each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. 66192-0003 from which the undersigned is authorized to draw.

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Respectfully submitted,

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